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JAMES R. BROWNING, Cle

No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, PLAINTIFF,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA, DEFENDANTS.

Supplemental Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint by the United States.

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Supplemental Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint by the United States.

May it please the Court:

Pursuant to the permission granted by this Court to Louisiana at the conclusion of the oral arguments herein on October 15, 1959, we submit this supplemental brief in the light of the oral arguments of counsel for the United States and the questions propounded by the Court during the arguments. Louisiana appreciates the permission granted.

This supplemental brief is limited to (1) the question of foreign policy with relation to a purported national boundary and State boundaries, (2) State boundaries in the Gulf of Mexico, as fixed by Acts of Congress—the supreme law of the land, and (3) the application of the Submerged Lands Act to the

State's Gulfward boundary as it existed at the time the State became a member of the Union.

I.

The Proper Construction of the Submerged Lands Act Supports a Three League Measurement of the Submerged Lands and Property Rights To Be Enjoyed by Louisiana and No Foreign Policy Question Can Vitiate Such Rights and None Is in Conflict Therewith.

This suit is brought to interpret and apply the provisions of the 1953 Submerged Lands Act, 67 Stat. 29, which granted and confirmed full title to the respective states of all lands which at the effective date of the Act and formerly were lands beneath navigable waters within the seaward boundaries of the states as they existed *at the time* such state became a member of the Union, *or as theretofore approved by the Congress*, extending from the coastline not less than 3 geographical miles and not more than 3 marine leagues into the Gulf of Mexico, the term "coastline" being defined as that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

The Submerged Lands Act is a policy declaration by the Congress and the President that the States should have the natural resources from the submerged lands within the specified limits.

Obviously, the Submerged Lands Act which was designed to produce a different effect from that resulting from the California decision (*United States v. California*, 332 U.S. 19) cannot fairly be said to contain within itself an implication that national and international considerations which produced the California decision must be applied to any state claims to submerged lands beyond three miles. On the contrary, the Congress, while uniformly setting the three-mile pattern of ownership of submerged lands and resources for the Atlantic and Pacific Oceans, made two exceptions, one for the States bordering the Great Lakes which receive submerged lands for many, many miles, another for the States on the Gulf of Mexico not more than three marine leagues from coast.

Congress viewed the Submerged Lands Act as a restoration, but whether viewed as a restoration or grant, Congress did define the term "boundaries" in Section 2(b) within which said restoration or grant of submerged lands and resources therein was made to the states as including the seaward boundaries of a state in the Gulf of Mexico as they existed *at the time* such state became a member of the Union, *or as theretofore approved by the Congress*, but in no event as extending from the coast line more than three marine leagues into the Gulf of Mexico. In Section 4 of the Submerged Lands Act Congress further provided that nothing in said section was to be construed as prejudicing the existence of any state's seaward

boundary beyond three geographical miles if it was so provided by its Constitution or laws prior to or at the time such state became a member of the Union, or if theretofore approved by Congress.

The Solicitor General has urged the Court to decide this case under a strained construction, both as to the Submerged Lands Act and as to laws or treaties defining the boundaries of the interested States. It is the view of the defendant states that the Court should construe the applicable laws so as to carry out the purpose and intent of Congress in passing the Submerged Lands Act. Congress declared it to be in the public interest to vest these resources and their management in the states. The intent thus declared is outlined and explained in the committee reports which recommended passage of the Act.

The Senate and House reports both emphasize a purpose to restore to the states possession and control of submerged lands within their historic boundaries as a matter of equity so as to make a fair and just settlement of conflicting claims which had retarded the development of resources of tremendous value and importance to the States and to the Nation.

SENATE REPORT No. 133 at page 24 states this purpose clearly:

> "The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 states in that it reestablishes in them as a matter of law

that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens."

Attached to and made a part of Senate Report No. 133 are the reports of prior Committees which likewise emphasize that the purpose of Congress is to restore to the states possession and control over submerged lands within their historic boundaries as a matter of equity and simple justice. In Appendix E of the Senate Report at page 67-68 the equitable principles involved were stated as follows:

"The evidence shows that the States have in good faith always treated these lands as their property in their sovereign capacities; that the States and their grantees have invested large sums of money in such lands; that the States have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness, school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

* * *

".... The committee believes that, as a matter of policy in this instance, the same equitable prin-

ciples and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See *Indiana v. Kentucky*, 136 US 479, 500 (1890); *U. S. v. Texas*, 162 US 1, 61, (1896); *New Mexico v. Texas*, 275 US 279 (1927).) Therefore, the committee concludes that in order to avoid injustices to the sovereign States and their grantees, legislative equity can best be done by the enactment of S. 1988."

House Report No. 215 emphatically states that the rights of the States in the Submerged Lands Act are not to be determined on the basis of technical rules but rather on broad principles of equity. We quote from page 47 of the report:

> "The Congress, in the exercise of its policy powers, is not and should not be confined to the same technical rules that bind the courts in their determination of legal rights of litigants. Too many people have acted over too long a period of time under a justifiable and reasonable belief for the Congress to refuse to vest in the States the submerged lands within their boundaries, merely because of the lack of a technical legal consideration moving from the States."

In view of the legislative history concerning the objects and purposes of the Submerged Lands Act and its language, it is quite evident that Congress did not intend to view the questions presented to this Court in a narrow or technical sense. Such a construction will not support the government's position that state

boundaries can only be determined on the basis of foreign policy or international law.

United States v. State of Michigan, 190 U.S. 379, referred to by the Solicitor General in oral argument, does not in the slightest detract from the statements just made. The Court there dealt with whether or not certain statutes relative to a canal put the state in a position of trustee or were intended to give the state a profit. It is from that case which the Solicitor General drew his comment concerning strict construction limiting grants by the United States, but the Solicitor General overlooked the basic statement of the Court which we quote:

> "In the consideration of this case, the controlling thought must, of course, be to arrive at the meaning of the parties, as expressed in the various statutes set forth in the bill. While that meaning is to be sought from the language used, yet its construction need not be of a narrow or technical nature, but, in view of the character of the subject, the language should have its ordinary and usual meaning."

Moreover, the Acts of Admission of the States are not to be considered in the light of grants, but the establishment of member states of our great Union, and in the case of Louisiana, it was the execution of a trust or obligation assumed in the Treaty of Cession of the Louisiana Territory in 1803.

We must and do assume that the Submerged Lands Act was not a purposeful deception of the

Congress and the President, and that it is not to be nullified by application of a national policy said by the Solicitor General to have existed during the years in which these five states came into the Union, though the actions of the government concerning them during those years would convince anyone knowing the record that no foreign policy limiting a national boundary to three miles existed in the Gulf of Mexico then or now.

Re: Foreign Policy

Although it should be accepted as axiomatic that the boundaries of States admitted into the Union by Acts of Congress, under its exclusive authority of Article IV, Section 3 of the U. S. Constitution are controlled by the description of said boundaries, whether landward or seaward, in the Act of Admission, and that the alleged foreign policy of this country is entirely irrelevant and cannot control the extent of state boundaries, we submit that the record absolutely refutes the claims of a 3 mile belt foreign policy or national boundary advocated by the Solicitor General in this case.

The amended complaint of the United States against the States of Louisiana, Texas, Mississippi, Alabama and Florida uniformly alleges that when these states became members of the Union, their boundaries did not extend into the Gulf of Mexico more than 3 geographical miles from the outer limit of inland waters, and the Congress of the United

States has never approved a boundary for said states extending into the Gulf of Mexico more than 3 geographical miles from the outer limits of their inland waters,—all because the Solicitor General says the width of the marginal sea within the jurisdiction of the United States, is controlled by application of the foreign policy of the United States, which since 1793 established a 3 mile national boundary, beyond which no state's maritime boundary may extend.

The government's entire case is based upon this theory.

The voluminous references in argument and briefs by the Solicitor General for the United States in this case is summarized in the statements on alleged foreign policy made in a letter of June 15, 1956 by the late Secretary Dulles to ex-Attorney General Brownell.[1] The principal claims to a 3 mile foreign policy since 1793 there made were based on statements by Thomas Jefferson, as Secretary of State, in his letter to French Minister Genet on November 8, 1793; to Secretary of State Madison's statement in 1807 that there could be no pretext for allowing less than a marine league from shore, that being the narrowest claim of any nation; and to the note addressed by Secretary Seward to the Spanish Minister on December 16, 1862 regarding a 3 mile belt around Cuba.

[1] Appendix B, pages 176 to 180 of Government Brief, filed 1957.

From these, the government wishes the Court to accept its view that the 3 mile limit has remained unchanged from the beginning of our Nation to this day. Mr. Dulles' letter does not support that position for he clearly says that our statesmen kept an open mind on the matter for awhile after the turn of the nineteenth century and nothing in his letter refers to any definite policy of our government regarding the extent of its territorial waters in the Gulf of Mexico.

The record refutes the conclusion which the government seeks to draw from statements made by Jefferson, Madison and Seward as will be shown by the following:

The Jefferson-Genet Letter

A reading of the Jefferson-Genet letter of November 8, 1793 will show that Jefferson actually wrote that the greatest distance extended among nations was upward of 20 miles, and the smallest distance claimed by any nation was "the outmost range of a cannon ball, usually stated at one league;" and that 3 leagues has some authority in its favor; but that the character of our coast did entitle us, "to as broad a margin of protective navigation," as any nation and while not proposing at that time to fix the distance to which the United States may ultimately insist upon the right of protection, the President gave instructions for the present to the distance of one sea league, or three miles from shore.

Jefferson Repudiated 3 Mile Claim

In 1806 Thomas Jefferson, as President, repudiated the above declaration in his letter to Genet as establishing a fixed limit, and he claimed that the limit of neutrality should extend "to the Gulf stream which was a natural boundary (!) and within which we ought not to support any hostility to be committed."[2]

Backing up his Gulf stream claim, President Thomas Jefferson, in his Fifth Annual Message to Congress on December 5, 1805, said:

> "I found it necessary to equip a force to cruse within our own seas, to arrest all vessels of those descriptions found hovering on our coasts within the limits of the Gulf Stream and to bring the offenders in for trial as Pirates." [3]

Madison Claimed To Gulf Stream

Although the late Secretary's letter quotes Secretary of State Madison in 1807, to the effect that there could be no pretext for allowing less to the nation than a marine league from the shore, his letter is silent on Madison's historic letter to Messrs. Monroe and Pinkney, Ministers to London, on May 17, 1806, as follows:

> "In defining the distance protected against belligerent proceedings, it would not, perhaps,

[2] Fulton, The Sovereignty of the Sea, 1911, page 575.

[3] Richardson's Vol. 1. Messages and Papers of the Presidents. 1789-1817, pages 382-388.

be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well defined path of the Gulf stream, to expect an immunity for the space between that limit and the American shore."[4]

The late Secretary's letter does not point out nor does the Solicitor General in his argument or briefs refer to the fact that evidently President Jefferson and Secretary Madison saw to it that their statements regarding the natural Gulf stream limits were adopted by Congress.

1807 Act Of Congress Ratified Gulf Stream Claim

On February 10, 1807, President Thomas Jefferson signed an Act of Congress which authorized the President to cause a survey to be taken of the coasts of the United States, "within 20 leagues of any part of the shores of the United States," and beyond "to the Gulf stream," as in his opinion may be especially subservient to the commercial interests of the United States.[5]

In connection with the 20 league coastline authorization by Congress, it should be pointed out that Thomas Jefferson was one of the five ministers appointed by Congress to make and sign the treaty with

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[4] Masterson, Jurisdiction in Marginal Seas, p. 254.

[5] Laws of the U.S.A. Vol. 4, 1789-1815, pp. 79-80.

the British Crown which concluded the Revolutionary War in 1783.[6]

The Congress, by resolution adopted August 4, 1779,[7] had instructed our ministers negotiating for said treaty to insist on the 20 league boundary as an "ultimatum." Article 2 of the treaty fixed the Atlantic coastal States' boundary at 20 leagues from shore and also fixed the original states' boundaries on the Great Lakes where they exist today, many, many times more than 3 miles to the international boundary with Canada.

This Court had occasion to refer approvingly to those boundaries in *Johnson v. McIntosh*, (1823).[8]

The statement attributed to Madison as Secretary of State in 1807 that the least that could be allowed the United States was a marine league from shore, although meaningless from the standpoint of establishing any 3 mile belt, is certainly negatived by the fact that it was the same James Madison, who as President, approved the Act of Congress on April 8, 1812, which admitted Louisiana as a State into the Union and fixed its maritime boundary at 3 leagues from coast in the Gulf of Mexico.

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[6] General Records of the U. S. Govt. (R. G. 11) Papers of the Continental Congress, Item 25-Vol. 1.

[7] Ibid, R. G. 11, Treaty Series No. 102.

[8] 8 Wheat. 543, 584.

Now, those are the facts of record which absolutely refute the claim made by the government, that Jefferson and Madison in effect originated the 3 mile belt from shore foreign policy, which supposedly resulted in a 3 mile maritime national boundary.

Further, the late Secretary Dulles' letter attributes to Secretary of State Seward a position supposedly illustrating his advocacy of the 3-mile belt principle, in a letter to the Spanish Minister in 1862, involved in diplomatic exchanges between Britain and Spain, over Spain's 6 mile maritime claim,—at the same time Britain exercised maritime jurisdiction from 2 leagues to 100 leagues under various Acts of Parliament, affecting different British possessions and colonies. Spain adhered to its 6 mile claim.[9]

Secretary Seward Negotiated Alaska Treaty 10 Leagues From Coast (Not 3 Miles)

To the contrary, however, it was Secretary Seward who negotiated the Treaty with Russia for the purchase of the Alaska Territory on June 20, 1867,[10] which fixed the Alaska Territory maritime boundary out to "10 marine leagues from the coast", and which was ratified by the U. S. Senate.

No Treaty Ever Fixed 3-Mile Belt

It is admitted that there have been numberless diplomatic exchanges, commercial conventions and

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[9] Masterson, ibid., pp. 256, 288-289.

[10] 15 Stat. 539.

treaties and the like, but none of these ever purported to fix the territorial limits of the United States at 3 miles from shore.

Those diplomatic exchanges were merely expressions of "firm intention to uphold the principle that 3 marine miles constitute the proper limits of territorial waters".[11]

In view of all these inaccuracies made in support of a 3 mile belt foreign policy claim, how can the Court consider it as evidence of anything relating to maritime boundaries?

This Court Rejected 3-Mile Belt

In 1804,[12] regarding the claim that the maritime boundary extended only to the cannon shot, or 3-mile belt, this Court said:

> "Indeed the right given to our revenue cutters, to visit vessels four leagues from our coast, is a declaration that in the opinion of the American Government, *no such principle as that contended for has a real existence*". (Our emphasis)

This decision was based on a 1790 Act of Congress, R.S. 2867 and 2868.

And, in 1818,[13] this Court held:

> "What, then, is the extent of jurisdiction which a State possesses?

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[11] Masterson, ibid., pp. 346, 352, 395, Foot-note 54.

[12] *Church v. Hubbart*, 2 Cranch 187, 284.

[13] *U. S. v. Bevans*, 3 Wheat 386, 385.

"We answer, without hesitation, *the jurisdiction of a State is co-extensive with its territory; co-extensive with its legislative power.*" (Our emphasis)

In 1892,[14] this Court held that in questions respecting the boundaries of nations, more political than legal, the Courts of every country must respect the pronounced will of the legislature, (Citing *Foster v. Neilson*, 2 Pet. 253, 307, 309.) and that in questions of boundaries arising between the general government and one of the states composing the Union, *the correct decision of such boundary depended upon the constitution, laws and treaties of the United States.*

II.

Congress Rejected Three Mile Belt and Adopted Three Leagues from Coast in the Gulf.

In Secretary Dulles' letter, used as "evidence" in this case (Appendix B, pp. 342-346 of Plaintiff's brief) filed May 1958, he said:

"When the Submerged Lands Act was under consideration in Congress, the Department of State testified before the Senate Committee on Interior and Insular Affairs on the foreign relations aspects of the proposed legislation, including the extent of the territorial waters of the United States. The Department testified that the United States had traditionally supported the three-mile limit, that is, a breadth of territorial

[14] *United States v. Texas*, 143 U.S. 621.

waters of three nautical miles measured from low water mark on the shore. (See Hearings on S. J. Res. 13 and other bills before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress, 1st Session, February 16-27, March 2-4, 1953, p. 1051.)

"This position is supported by a long line of court decisions, treaties and statements of the Executive going back as far as 1793, when this Government first had to face the question of the breadth of territorial waters."

During congressional hearings on the Submerged Lands Act, the U. S. Attorney General and Deputy Legal Adviser to the State Department testified, and made the same claims for a 3 mile from shore foreign policy and national maritime boundary, *as they make again in this case, but Congress rejected them flatly.*

Here is some of the evidence from the record of those hearings before the Senate Interior Committee, in March, 1953, at pages noted: (all italics added for emphasis)

While Attorney General Brownell was testifying, he was questioned at length on this subject, as follows:

At p. 931:

"**Attorney General Brownell.** The traditional 3-mile limit would be an accurate description."

"**Senator Anderson.** It is very important that we know *out from what.* Out from *the coastline or the shoreline?* The Holland bill says the coast."

At p. 932:

"**Attorney General Brownell.** The general description *we would use* is *the shoreline.*"

"**Senator Anderson.** Shoreline. *You recognize that that is completely different from the language in the Holland bill* and the Daniel Bill?"

"**Attorney General Brownell.** I believe *you are correct* in that statement."

At p. 933:

"**Senator Anderson.** I could not agree with you more, General Brownell, and I think if somebody came in with a line drawn that *3 miles from the shore, it might be one thing;* but *3 miles from the coast,* if the coast is nebulous and reaches out *to the farthermost edge of the farthermost reef,* it is quite a problem as to where it is going to be."

"**Attorney General Brownell.** I *agree with that.*"

At p. 939:

"**Senator Long.** There has been some *question raised* with regard to *whether* you should *use a shoreline definition or a coastline definition* . . . . . You would have a boundary between inland waters and the marginal belt; and, based upon that, if there were to be a 3-mile limit, it would have to measure forward from *the boundary of inland waters, which is the distinction which is made between the word 'coast' and the word 'shoreline.' The word 'coast' means to*

measure from the boundary line of inland waters, while the word 'shoreline' means to measure from the shore itself . . . . I would point out to you that, *with regard to the State of Louisiana*, the Enabling Act that brought the State in refers to the southern *boundary as 'extending to the said gulf* to the place of beginning, including all islands *within 3 leagues of the coast.'* "

"*Congress cannot very well apply a shoreline definition to Louisiana after it has already fixed its boundary as a coast line, can it?*"

"**Attorney General Brownell.** We would want to give that a little study, Senator, before we answer that particular point."

At p. 947:

"**Senator Kuchel.** * * * *When you suggested the 'shoreline'* be used as the basis for any congressional description, you would of course *exclude* from your use of the word 'shoreline' *any inland waters along any coastal State involved.*"

"**Attorney General Brownell.** *That is right.*"

"**Senator Kuchel.** The reason I ask that question is that the bill introduced by the Senator from Florida defines the term 'coastline' as meaning the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and is a line marking the seaward limit of inland waters, which includes all estuaries, ports, harbors, bays, channels, straits, historic bays and sounds, and all other bodies of water which joins the open seas."

At page 948:

> "In either of those instances would you object if these bills failed to describe in metes and bounds the lands that the congress is concerning itself with and used language generally as the Holland bill does?"
>
> "**Attorney General Brownell.** We certainly could not object to that. *That is a matter of congressional policy.* We only make our suggestion for the purpose of certainty."

The State Department was represented by its Deputy Legal Adviser, Mr. Tate, before the Senate Interior Committee.

He made the same broad and unfounded statements that the federal government's claim as to territorial waters always has been 3 miles from shore, —and he added, "This position has never been changed."[15]

When asked if Congress recognized a coastal state's seaward boundary at more than 3 miles from shore, would that constitute a departure from established historic positions of the United States with respect to outer limits of territorial waters of the United States, and Mr. Tate answered, most positively (and most incorrectly), as follows:

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[15] Report of said hearings, pp. 1052, 1053, 1056, 1065.

At page 1065:

"**Mr. Tate.** As I said before, it would be inconsistent with the traditional claim of the United States."

"**Senator Jackson.** The claims that this country has maintained ever since Thomas Jefferson was Secretary of State?"

"**Mr. Tate.** That is right."

So, when Congress finally enacted the Submerged Lands Act, and granted and confirmed full title in the respective States of all lands which at the time the State entered the Union and at the time of the passage of the Act were submerged lands within the Seaward or Gulfward boundaries of the State as they existed at the time such State became a member of the Union, extending from the coast line up to three marine leagues into the Gulf of Mexico, and when that Act was signed and approved by the President, the Congress and President rejected the so-called traditional 3 mile belt foreign policy or national boundary theory urged by the State Department and the Attorney General of the United States.

So, we submit that there is no basis or foundation in fact for a so-called 3 mile belt foreign policy restricting State boundaries, and that we should look solely and only to the Acts of Congress which admitted

the States into the Union for the extent of their Seaward or Gulfward boundaries.

III.

All Five States' Gulfward Boundaries Fixed at Three Leagues or More.

The United States Constitution, Article 4, Section 3, gives to Congress alone the authority to admit new states into the Union and to fix their boundaries. Article 6 also provides that all provisions of the Constitution and all laws enacted by Congress pursuant thereto, as well as treaties made by the United States, shall be the *supreme law of the land.*

The Acts of Congress, therefore, which admitted the five Gulf coastal States as members of the Union and described their limits and boundaries, are *the supreme law of the land.* The Solicitor General for the United States cannot point to any treaty affecting the gulfward boundaries of these States, which might serve to complicate the issue.

If foreign policy has anything to do with the extent of a State's boundary, then most certainly these Acts of Congress, approved by the President, established that foreign policy for this Gulf Coast area.

Louisiana, Three Leagues from Coast

Louisiana was the first Gulf Coastal State admitted by Act of Congress on April 8, 1812,[16] which

[16] 2 Stat. 701.

described the State's boundary the same as in the enabling act on February 20, 1811,[17] which authorized the people of the territory of Orleans to adopt a constitution to establish a state government, and the same as in the State's 1812 constitution, which was approved by the Act of Congress which admitted Louisiana as a State in the Union, within certain specified limits including "all that part of the territory or country ceded under the name of Louisana" by the treaty made in Paris on April 30, 1803 "contained within the following limits, that is to say:—Beginning at the mouth of the River Sabine, thence by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude, *** to the Gulf of Mexico; thence bounded by the said Gulf, to the place of beginning, including all islands within 3 leagues of the coast."

In *Louisiana v. Mississippi*, 202 U.S. 1, this Court quoted the above boundary description and held "Map of diagram No. 1 given in the opening statement shows the *limits* as thus defined."

We have attached at the end of this brief a copy of Diagram I, showing an unbroken line three leagues from coast in the Gulf of Mexico.

Those *limits* include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico.

[17] 2 Stat. 641.

However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one's thinking with the fact that by boundary description in the Congressional Enabling Act of 1811, the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the State of Louisiana, both landward and seaward and to include all islands within said limits. Therefore, the limits described in those three instruments must be accepted as having contained all that part of the Louisiana territory ceded by France beginning at the mouth of the River Sabine thence a line to be drawn along the middle of said river, to the thirty-second degree of latitude, etc., to the River Mississippi, thence down said river to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning within three leagues of the Coast.

This three league boundary in the Gulf to the "Place of beginning" which is given as the mouth of the River Sabine established the corner recognized by the United States and Spain in the 1819 treaty, reaffirmed with Mexico in 1828, and again with the Republic of Texas in 1838, and became the basis for the Treaty of Guadalupe Hidalgo in 1848.

That was Louisiana's gulfward boundary as it existed *at the time* the State entered the Union.

Mississippi, 6 Leagues from Shore in Gulf of Mexico

The Enabling Act of Congress of March 1, 1817,[18] authorized the inhabitants of the western part of the Mississippi territory to form a constitution and state government.

The 1817 Mississippi Constitution, adopted pursuant to said Enabling Act described Mississippi's boundaries as follows: "Beginning in the Mississippi River (meaning thereby the center of said river or thread of the stream)," then following certain courses, "thence on a direct line to a point ten miles east of Pascagoula River on the Gulf of Mexico, thence westwardly, *including all the islands* within six leagues of the shore, to the most eastern junction of the Pearl River with Lake Bourgne;" then following certain courses, "thence up the middle of the Mississippi River or thread of the stream, to the place of beginning, *including all islands lying east of the thread of the stream of said river.*"

Again, reference to the inclusion of all islands east of the thread of the Mississippi River and within six leagues of the shore in the Gulf of Mexico, did not affect the exterior boundaries of the State of Mississippi as being either the middle thread of said river or six leagues from shore in the Gulf of Mexico.

The 1817 Mississippi State Constitution, including said boundary description, was approved by the

[18] 3 Stat. 348.

Act of Admission by Congress on December 10, 1817.[19] Therefore Mississippi's gulfward boundary as it existed *at the time* the state entered the Union was six leagues from shore.

Alabama, 6 Leagues from Shore in Gulf of Mexico

The Enabling Act of Congress of March 2, 1819,[20] authorized the inhabitants of the territory of Alabama to form a constitution and state government, the said state to consist of "all the territory included within the following boundaries, to-wit: "Beginning at the point where the thirty-first degree of north latitude intersects the Perdido River"; then following certain courses, "thence, due south, to the Gulf of Mexico thence, eastwardly, *including all islands* within six leagues of the shore, to the Perdido River; and thence, up the same to the beginning."

The same boundary description was included in the Act of Congress of March 3, 1817,[21] creating the Alabama territory, in the original Alabama Constitution which was approved by Congress in its Act of Admission of Alabama as a state into the Union on December 14, 1819,[22] and in the 1868 Alabama Constitution approved by Congress on June 25, 1868.[23]

[19] 3 Stat. 472.

[20] 3 Stat. 489.

[21] 3 Stat. 371.

[22] 3 Stat. 608.

[23] 15 Stat. 73.

Again, reference to the inclusion of all islands did not defeat the purpose of these instruments in describing the outer limits or boundaries of the State of Alabama, as they existed *at the time* the State entered the Union, and as heretofore approved by Congress in 1868, within six leagues from shore in the Gulf of Mexico.

Florida, at least 3 Leagues in Gulf of Mexico

By Act of March 30, 1822,[24] Congress created the territory of Florida, and by Act of March 3, 1845,[25] Congress admitted the State of Florida into the Union, and in each Act described the Florida boundaries as embracing "the territories of East and West Florida, which, by the Treaty of Amity, settlement and limits between the United States and Spain, on the 22nd day of February, 1819,[26] was ceded to the United States."

The historic boundaries of East and West Florida territories were established by proclamation of the British Crown on October 7, 1763,[27] at six leagues from coast,—(recognized by this Court in *Harcourt v. Gaillard*, 1827, 12 Wheat. 523), after acquisition thereof from Spain by Treaty of Cession on February

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[24] Thorpe, Charters and Constitutions, Vol. 2, p. 657.

[25] ibid., p. 678.

[26] 8 Stat. 252-73.

[27] Commanger, Documents of American History, 5th Ed. 47.

10, 1763,[28] and the same was retroceded by Britain to Spain, January 20, 1783.[29]

The East and West Florida territories were ceded by Spain to the United States to the same extent, in 1819,[30] and to the same extent included in the Florida state boundaries fixed by reference by Congress in its Act of Admission in 1845, at six leagues from coast in the Gulf of Mexico, at the time Florida entered the Union.

In 1868 Florida adopted a State Constitution, in which the State's Gulfward boundary was described as three leagues from land in the Gulf of Mexico, which was approved by Congress the same year.

So, Congress fixed the Florida State boundary at the time it became a member of the Union, and heretofore, in 1868, approved its Constitution which described its gulfward boundary, each time a distance at least three leagues into the Gulf of Mexico.

We think it is quite clear that the action of Florida in naming a three league boundary was in recognition of the fact that the Louisiana boundary and the Texas boundary had been set at three leagues by the Congress and that the Treaty of Guadalupe Hidalgo so clearly set a national boundary of three leagues in the Gulf of Mexico. We think that the approval

[28] American History Leaflets, No. 5, Sept. 1892, by A. Lovell & Co., N.Y.

[29] White's Recopilacion, Vol. 2, p. 298.

[30] Thorpe, ibid., p. 678.

of the Constitution of the State of Florida by the Congress in 1868 stands for Congressional approval of that concept rather than a specific enlargement of the boundaries of Florida alone, and we think the statements of Attorney General Erwin to the Court corroborated our view, for he said at the conclusion of his argument that the three league boundary in the Florida Constitution was a recognition of what was believed to be the national boundary in the Gulf.

Florida clearly has a three league boundary, not because it claimed more in returning its representatives to Congress than it had before (an unlikely result) but because it at all times enjoyed so much.

Texas Boundary 3 Leagues into Gulf of Mexico

By Act of December 29, 1845,[31] Congress admitted Texas as a State into the Union to the extent of its territory properly included within the Republic of Texas.

The boundaries of the Republic of Texas had been fixed by its Congress on December 19, 1836,[32] and existed at the time it entered the Union as extending from "the mouth of the Sabine River, and running West along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande."

In this connection we ask the Court to note that Attorney General Wilson of Texas has said that ne-

[31] 9 Stat. 108.

[32] 1 Laws, Republic of Texas 133; 1 Gammel's Laws 1193.

cessarily the Republic of Texas in establishing its boundary took note of what had been done previously by the United States and Spain, and by the United States in admitting Louisiana, and construed the two together to mean that the United States had established for itself and Louisiana a three league boundary at the mouth of the Sabine River.

Nothing has been pointed to as evidence by the Solicitor General, nor can any showing be made that the 3 league gulfward boundary of the State of Texas was ever adjusted or modified by any act of the United States government under the reservation made in the Act as Annexation of Texas by Congress of March 1, 1845.[33]

To the contrary, the Guadalupe Hidalgo Treaty of 1848[34] confirmed this 3 league boundary line by making the same the international boundary with Mexico, adjoining the same Texas Gulfward boundary.

IV.

Supreme Law of the Land.

The above acts of Congress, admitting the five gulf coastal states, defendants, were enacted by Congress pursuant to express grant of authority by Article IV, Section 3 of the United States Constitution. Under Article VI of the Constitution, these Acts of

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[33] 5 Stat. 797.

[34] 9 Stat. 922.

Congress and the Treaty of Guadalupe Hidalgo are *the supreme law of the land.*

Counsel for the United States must admit, as his failure to produce any evidence to the contrary attests, that no treaty has ever been entered into by the United States which, in any manner, can be construed as compromising any of these state boundaries.

Diplomatic exchanges expressing intention to uphold the principle that three marine miles constitute the proper limits of territorial waters, no matter how often repeated and by whom, cannot supersede the supreme law of the land.

CONCLUSION

All along the shore of Louisiana the waters are so very shallow that sea going vessels cannot use them. This prevailed at the time Louisiana became a state. These waters are termed inland waters because of their character. Our coast begins where these inland waters meet the sea which has been and is recognized by all of the agencies of our government concerned with this matter. Recognition of this simple geographic fact imports fully with the definition used in the Submerged Lands Act and conforms also to the use of coast in the Act of Admission.

The term "coast line" is defined in Section 2(c) as being the line marking the seaward limit of inland waters. The report of the Committee on the Judiciary of the House of Representatives, House Report No.

215, which accompanied H. R. 4198, enacted as the Submerged Lands Act, explained (page 4) that the term "coast line" included ports, bays, channels, sounds and other bodies of water which join the open sea.

Similarly the Senate Committee on Interior and Insular Affairs reported that the term "coast line" meant the seaward limit of inland waters, which included ports, harbors, bays, etc. which joined the open sea and that the definition of "coast line" as carried in the Submerged Lands Act neither added nor took away anything a state had in the way of a coast and the lands underneath waters behind it (page 18, Senate Report No. 133).

In any event a consideration of this question is not necessary for determination of the issues in this case,—because the Submerged Lands Act, Section 2(b), specifically defines the term "boundaries" as including the seaward boundaries of states in the Gulf of Mexico as they existed at the time such state became a member of the union or as heretofore approved by Congress, but in no event to be interpreted as extending *from the coast line* more than three marine leagues into the Gulf of Mexico.

Therefore, we submit that as a matter of law the only judgment or decree which can be rendered in favor of the gulf coastal states for a recognition of their right to the submerged lands and resources therein within a certain distance out from their coast line, depends upon the extent of the state's boundary into the Gulf of Mexico at the time the state entered the union, or as heretofore approved by the Congress.

In the case of Louisiana, as shown above, the enabling act of Congress, the original 1812 Louisiana Constitution, approved by the Congressional Act of Admission of April 8, 1812, all fixed Louisiana's gulfward boundary at *three leagues from coast* in the Gulf of Mexico.

Therefore, we submit that the only judgment which can be rendered in this case according to law, insofar as the defendant State of Louisiana is concerned, is a decree that Louisiana's gulfward boundary as it existed at the time this state entered the union was three leagues from coast in the Gulf of Mexico and that the State of Louisiana is entitled to all lands and the natural resources within such lands and waters which at the time the state entered the union, and at the time of the effective date of the Submerged Lands Act were submerged lands within such gulfward boundaries of the State of Louisiana.

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I, Jack P. F. Gremillion, Attorney General of the State of Louisiana, one of the attorneys for said state, a defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that I have served the required number of copies of the foregoing Supplemental Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint, by mailing said copies to the Attorney General and the Solicitor General of the United States, respectively, addressed to them at their offices in the Department of Justice Building, Washington, D. C. Said copies have been sent, via Air Mail, postage prepaid, on October ____, 1959.

Of Counsel

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Supreme Court of The United States

OCTOBER TERM 1959

No. 10, Original

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,

Defendants.

BRIEF OF THE STATE OF FLORIDA FILED SUBSEQUENT TO ARGUMENT

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UNITED STATES OF AMERICA,

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—vs—

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,

Defendants.

BRIEF OF THE STATE OF FLORIDA FILED SUBSEQUENT TO ARGUMENT

Appreciation is expressed to the Court for the opportunity to file a final brief for Florida. This brief will cover three subjects:

1. INTENT OF THE SUBMERGED LANDS ACT.
2. FLORIDA'S CLAIM PRIOR TO, AND AT THE TIME OF STATEHOOD.
3. FLORIDA'S CLAIM AS APPROVED BY CONGRESS PRIOR TO PASSAGE OF THE SUBMERGED LANDS ACT.

In this brief we have given a short resume of our position on these three subjects, emphasizing points that appeared significant in the oral argument. For purposes of brevity, the Submerged Lands Act will hereafter be referred to in this brief as SLA.

1. INTENT OF THE SUBMERGED LANDS ACT.

The main purpose of the SLA was to follow the suggestion made by this Court in the California case (332 U. S. 27, 40) that the Tidelands controversy might be settled by Congress (Joint Brief of the Defendant States, page12.)

In drafting and adopting the SLA, Congress adopted the "historic" boundaries of the Gulf states, as they existed either at the time of statehood or as subsequently approved by the Congress, not as international boundaries but as a boundary limitation upon the extent of the conveyance and transfer to the states.

Congress found it to be in the public interest that the properties and property rights within "historic" boundaries, as described in said act, be vested in the states. The measure of the extent of this conveyance and transfer was the said "historic" boundaries limited, however, to three leagues from the coast.

Such boundaries, being for the purpose of transferring property and property rights, should not be confused with international boundaries (U. S. territorial sea) established by the political branches of the Government for international purposes. These are domestic boundaries which

need not be reduced to the dimensions of international boundaries, intended for international and not internal affairs. (Joint Brief of Defendant States, pages 7-17.)

These "historic" boundaries may serve state purposes only. For example, they mark the jurisdiction of states in internal domestic matters such as venue, county boundaries, private land titles and leases and serve other state purposes. They can also serve as the calls or conveyance lines of the congressional grants as between the states and the Federal Government of the natural resources in the sea bed and subsoil of the Gulf of Mexico. (Florida's Brief, pages 38 and 39.)

The national boundary (U. S. territorial sea) may be "rolled" forward or backward, as our international interests require. In Geneva last year the United States, at an International Conference on the Law of the Sea, proposed our national boundary be "rolled" forward to six miles. (Government's Brief, footnote, page 14.) Our national boundary may or may not be coincident with states' "historic" boundaries in the Gulf of Mexico, depending upon our nation's current international policy.

It is, we think, unsound logically and unduly technical for the Government to attempt to equate two essentially different things – a state boundary determined upon by Congress for the domestic purposes of a state which can only be changed by Congress with the consent of the state, and an international boundary (U. S. territorial sea) for foreign relations which may be changed from time to time unilaterally by the Federal Government. It is made clear in both the SLA and the Outer Continental Shelf Lands

Act (67 Stat. 462) that delegated national "imperium" in navigable waters is not to be confused, or deemed in conflict with "dominium" in the natural resources in the sea bed or subsoil which may be the subject of congressional apportionment between the states and the Federal Government. (See Florida's Reply Brief to Governmen's Reply Brief, pages 17 and 18.) "Dominium and imperium are normally separable and separate." *United States v. Texas*, 339 U. S. 707, text 719.

The national boundary (U. S. territorial sea) and states' "historic" boundaries should not be confounded or confused by the Solicitor General for the very transparent purpose of defeating the grants to the Gulf states. We think *Alabama v. Texas*, 347 U. S. 272, settled this confusion, yet the Solicitor General by rationalization seeks to reach over this case to the earlier cases of California, Louisiana and Texas and draw inferences from them to support his position (Government's Brief, pages 12 to 16, inclusive). He overlooks the fact that in the California case this Court pointed the way for settlement of the Tidelands controversy and in *Alabama v. Texas*, supra, held constitutional its suggested method (SLA) as a valid congressional disposal of property of the United States. The "historic" domestic boundaries of the states are the measures of the grants and are not to be confused or confounded by considerations of international law. [Joint Reply Brief of the Defendant States (second brief), pages 47 to 62, inclusive.]

The Tidelands cases (California, Louisiana and Texas) do not support the Government's contentions that the states have no legal offshore boundaries because they are mere "paper" boundaries, or that they shrank at statehood

to coincide with the national three mile belt. The rationale of these cases is that the states did not own the offshore areas or the property in a three mile offshore belt because the United States had paramount rights therein from low water mark, irrespective of states' boundaries. However, in the California case (332 U. S. 19, at pages 36 to 38, inclusive) the Court says it concedes states exercise local police power functions within their *declared boundaries*. Also in the California case the Court refers to two earlier cases where it recognized Florida had "territorial limits" in the Gulf of Mexico. (*The Abby Dodge*, 223 U. S. 166, and *Skiriotes v. Florida*, 313 U. S. 69.) These Florida Gulf limits were mistakenly presumed by the Court in the California case to be a three mile belt (332 U. S. 19, at page 37) because in the light of the facts of the instant case this Court will recall that Florida's limits in the Gulf declared by its constitution are three leagues. In the Louisiana Tidelands case (339 U. S. 699) the Court stated it expressed no opinion relative to the power of a state to define its external territorial limits so far as it affected persons other than the United States and that state boundaries had no bearing on the problem then before the Court.

The point made is that while these territorial offshore limits or marine boundaries of states had no efficacy in establishing state ownership in offshore submerged areas under the holdings in the Tidelands cases, they nevertheless were recognized to exist unshrunken for the exercise of other state functions. They were not held to be mere "paper" boundaries. There is nothing in these cases reducing them to the limits of the national three mile belt. Since Congress has complete constitutional power to dispose of the offshore natural resources without limitation

(*Alabama v. Texas*, supra), we submit there are no restrictions upon its power to choose these boundaries to measure this disposition to the Gulf states.

This analysis is in complete harmony with the legal principles enunciated in the Tidelands cases and does not attempt to relitigate those cases. While admitting these "historic" boundaries had no status for establishing ownership in natural resources offshore prior to SLA, it would now be a surprising contradiction if the irrelevant conclusions drawn by the Solicitor General from the Tidelands cases should produce the same result outward from the three mile limit as was reached in those cases at and beyond low water mark. Congress, following the suggestion of this Court, has exercised its power to grant natural resources within those "historic" boundaries to the Gulf states and there is not the slightest inference or implication in the adjudicated decisions of this Court that such boundaries are illegal, nonexistent or shrunken, or that such boundaries could not be the predicates upon which said grants are based.

By the provisions of the SLA the international boundary of the nation is excluded by the context of the SLA from supplanting or prejudicing "historic" boundaries of states found in their constitutions, enabling and admission acts. To import into the context of the SLA the extraneous element of a national boundary (U. S. territorial sea) does violence to the clear intent of Congress as expressed in the SLA and is contrary to recognized rules of statutory construction. (Joint Brief of Defendant States, pages 33 to 36, inclusive and Florida's Reply Brief to Government's Reply Brief, pages 15 and 16.)

What we have said in this portion of our brief relates to general propositions relative to the meaning of SLA and is intended to rebut extraneous arguments of the Government. We do not mean to give the impression that each Gulf state does not have to establish a pre-admission or postadmission boundary within the contemplation of SLA, but we do maintain that such boundaries if they exist are not cancelled out or shrunken by the holdings in the Tidelands cases.

2. FLORIDA'S CLAIM PRIOR TO, AND AT THE TIME OF STATEHOOD.

Florida was admitted into the Union in 1845. At that time its Constitution (1838) and its Admission Act described the boundaries of the state as embracing the ". . . Territories of East and West Florida, which by the Treaty of Amity, Settlement and Limits, between the United States and Spain, . . . were ceded to the United States" (1819). (Florida's Brief, pages 64, et seq.)

Reference to this Treaty discloses that "*the adjacent islands dependent on said provinces*" (East and West Florida) were ceded (emphasis supplied). In addition to ceding the Floridas to the United States, the Treaty fixed the boundary line between the United States and Spain "west of the Mississippi" (see Article III), which began "on the Gulf of Mexico, at the mouth of the river Sabine, *in the sea* . . ." (emphasis supplied).

Spain originally claimed the Floridas by discovery; however, by the Definitive Treaty of Friendship and Peace, concluded between Spain and Great Britain at

Paris on February 10, 1763 (1 Martens 108), Spain ceded the Floridas to Great Britain, whereupon the King of England (George III) by his proclamation of October 7, 1763 (Annual Register, 1763, pages 208 ff), declared that the government of West Florida was bounded" . . . *to the southward by the Gulf of Mexico, including all islands within six leagues of the coast* . . ." (Florida's Brief, page 67, emphasis supplied.)

The Floridas were retroceded by Great Britain to Spain by the Definitive Treaty of Peace and Friendship, signed at Versailles on September 3, 1783, merely by reference to the Floridas and without specific boundary description.

It was doubtless the purpose of both Great Britain and Spain that Great Britain recede to Spain all the Florida territories claimed by her, including those rights, properties and jurisdiction claimed under the above proclamation of October 7, 1763. Spain's claim, under the said treaty of September 3, 1783, doubtless included "*all islands within six leagues of the coast,*" claimed by the King of England by his proclamation of October 7, 1763.

Examination of the United States Coast and Geodetic Survey Map 1007, left with the Court after oral argument as Florida's Exhibit, shows numerous islands of varying sizes bordering on the Straits of Florida, between Florida and Cuba, including the string of islands known as the Florida Keys extending from the tip of the Florida mainland to the Dry Tortugas Islands; and numerous islands along the west coast of Florida from Tampa Bay south, as well as from Tampa Bay to the Suwannee River. Large islands or groups of islands are also located off the coast of the northwestern portion of Florida and additional groups

of islands border the coasts of Alabama, Mississippi and Louisiana.

Piracy and buccaneering were prevalent in the Caribbean Sea and adjacent areas from an early date until around 1800 (*The Age of Piracy*, by Robert Carse; *Piracy was a Business*, by Cyrus H. Karraker; *The Buccaneers of America*, by John Esquemeling; *Our Navy and the West Indian Pirates*, by Gardner W. Allen; *Piracy in the West Indies and its Suppression*, by Francis B. C. Bradlee; *A History of the Robberies and Murders by the Most Notorious Pirates*, by Captain Charles Johnson; *The Encyclopedia Americana*, 1956 Edition, Volume 4, page 653; *Florida Historic Dramatic Contemporary*, by J. E. Dovell, of the University of Florida) and doubtless the islands in the Caribbean Sea and the Gulf of Mexico, as well as adjacent areas, were used as bases for piracy operations.

It doubtless was the thought of King George III of England, when he issued his proclamation of October 7, 1763, defining the boundaries of the Floridas in the Gulf as "including all islands within six leagues of the sea coast," that he was proclaiming to the world and particularly to all mariners that Britain asserted the right to protect its domain and interests within this boundary. This included, we believe, notice to pirates and privateers that Britain would give protection in this wider zone where coastal shipping had to sail farther from the coast because of the shallow waters of the Gulf. The above mentioned United States Coast and Geodetic Survey Map 1007 also shows the shallowness of the waters along the coast of Florida. The depths of waters in the Gulf as shown on this map are indicated in fathoms. For example, this map shows that the average depth within three leagues of coast between Tar-

pon Springs, Florida, northward to St. Marks, Florida, a distance of approximately 200 miles, is less than 8 feet.

As pointed out in oral argument, for several years now Florida citizens have undertaken extensive land fill developments in these offshore areas, including the building of highway causeways connecting the islands or keys, without any protest from the Government that any of the submerged areas filled belonged to the United States.

The claims of Louisiana, Mississippi, Alabama and Florida have several points of similarity. They all have boundary descriptions referring to islands lying within three or six leagues of coast or shore. Each state has a history of ownership of its territory by Spain or Britain, or both. Spain dominated all of the Gulf of Mexico at one time and made expansive marine claims. These four states inherited from Spain and Britain historic boundaries which represented marginal belts extending in the Gulf three leagues or more. These, we submit, are ancient territorial claims of control and domain, unlimited and undiminished by later inflections and rules of measurement which apply only to the territorial sea (3 mile belt) of the United States. It is true elaborate rules for measuring the territorial sea have been adopted as late as last year at the Law of the Sea Conference at Geneva. (See pamphlet entitled "Measurement of the U. S. Territorial Sea," by G. Etzel Pearcey, The Geographer, in the Department of State Bulletin, Volume XL, No. 1044, June 29, 1959.) But these rules apply only to "imperium" in overlying navigable waters and do not contravene, and could not contravene, without the approval of Congress and the consent of the Gulf states, the "historic" boundaries of these states which serve as the measures of grants of natural resources under SLA.

Even if these pre-statehood league dimensional boundaries were not described with the particularity which characterized Florida's three league boundary description in its 1868 Constitution, or the Texas boundary in its Enabling Act, it is implicit from the terms of these boundary descriptions and their scope that overall perimeter boundaries were contemplated. Though the niceties and exactness of language in the ancient treaties were not employed sufficiently well to satisfy some modern technical minds, we submit perimeter boundaries were nevertheless intended in point of fact.

The Treaty of Guadalupe Hidalgo of 1848, between the United States and Mexico, made no distinction between islands and intervening waters in fixing a three league boundary between these nations in the Gulf.

It is little wonder when Florida's 1868 Reconstruction Constitution was adopted that the Convention adopting it did not distinguish between islands and intervening waters. It considered it to be appropriate to prescribe a perimeter boundary including both islands and intervening waters.

Because of the clusters or groups of islands off the coast in the Gulf of Mexico, and the shallowness and shoalness of the waters around the margin of this landlocked inland sea, the marine boundary claims of the Gulf states were generally considered perimeter in nature and as including the waters as well as the islands. In the few decisions of courts where these boundaries were considered, they were regarded as perimeter boundaries. See *Louisiana vs. Mississippi*, 202 U. S. 1, text 37; Louisiana's Brief, pages 17 to 22, inclusive; Alabama's Brief, pages 10 and 11; Mississip-

pi's Brief, pages 13 to 19, inclusive. Later rules for measuring the territorial sea were wholly irrelevant to the issues presented in these cases.

There are several cogent reasons that can be assigned for this concept of a perimeter marine belt around these states. Professor Louis B. Sohn has set forth a number of the reasons why the Gulf is a special case. See his Memorandum, Exhibit I, Joint Brief of the Defendant States, pages 147, et seq. See also his letter of October 27, 1959 to the Attorney General of Florida. (Exhibit I, Appendix page 35, this brief.)

The language, "the adjacent islands dependent on said provinces," appearing in the Treaty of 1819, and the language in King George III's proclamation of 1763 that the government of West Florida was bounded " . . . by the Gulf of Mexico including all islands within *six* leagues of the Coast" connotes that something more than the islands themselves were embraced. These were "adjacent islands dependent on the said (Floridas) provinces" and control of the intervening waters around and between them and the mainland was, of course, essential to that dependency. True, there are stretches where but few islands lie off the coast on this long margin of the Gulf, but considered overall there are enough islands lying off the coast at intervals which justified bringing them within the protective reach of a three or six league perimeter in the 18th Century. The Florida Keys actually extend far beyond six leagues, which may have been one of the reasons the 1868 Reconstruction Constitution boundary was redrawn to envelop these Keys.

In ancient days when these provinces were possessed by

Great Britain and Spain, it would have been logical, even with the limited geographic knowledge of the times, to consider a six league perimeter boundary as necessary to satisfactorily encompass, protect and claim for the sovereign these islands bordering the Florida provinces in the Gulf.

It is not unreasonable, therefore, to consider these ancient boundaries of the four Gulf states, Louisiana, Mississippi, Alabama and Florida, as a three league or six league perimeter including both islands and intervening waters extending without break along the continuous margin of the Gulf coastline of the states.

Actually, in point of general historical and judicial considerations, until the rights of the United States in these natural resources were reviewed in the light of the paramount needs of the nation in 1945 by the Chief Executive and proclaimed to be superior to the claims of the coastal states, which this Court accepted perforce as a determination of a political branch of the Government, the concept or claim that the coastal states had proprietary rights out to the extent of their historic perimeter boundaries, unqualified or unrestricted to islands alone or to the limit of the United States territorial sea, was not generally questioned.

We believe that this Court will not be reluctant to view the "historic" boundary claims of Florida, Alabama, Mississippi and Louisiana in the light of contemporaneous constructions which these boundary claims received from the time of their original inception down to 1945. Actually this Court never held in the California, Louisiana and Texas tidelands cases that the ancient boundaries of the

Gulf coastal states were invalid per se. All that this Court actually held was that states' property claims within such boundaries must stand in abeyance to the paramount authority of the United States as pronounced by the President and the State Department, unless and until the Congress took a hand. This it has done in SLA. Section 4 of SLA neither questions nor prejudices "any state's seaward boundary beyond three geographical miles if it was so provided by its Constitution or laws prior to or at the time such state became a member of the Union, or if it has been heretofore approved by Congress."

These "historic" boundaries of the four states were interpreted and conceived by political and judicial authorities for many years to extend outwards from coastline beyond three miles as multiple league perimeter boundaries along the entire margins of these states and were not restricted to island areas alone, but were deemed to include the waters in such marginal perimeters and the sea bed under them. Such attributes were deemed logically complementary and dependent to the proper possession and control of these islands by these states. (*Pollard v. Hagan*, 3 How. 212; *Louisiana v. Mississippi*, 202 U. S. 1; *Commonwealth v. Manchester*, 152 Mass. 230, 241, 25 N. E. 113; *Manchester v. Massachusetts*, 139 U. S. 240; *Harcourt v. Gaillard*, 12 Wheat. 524, 6 L. Ed. 716. See Louisiana's Brief, pages 74 et seq.)

If the Court will lay aside the holdings in the Tidelands cases and modern rules of measuring the territorial sea when considering the precise question of whether these four states, Florida, Alabama, Mississippi and Louisiana, had prestatehood "historic" boundaries of three leagues or more, which we believe the Court should do in view of

the language of SLA and the intent of Congress expressed therein, despite the Government's repeated attempts to inject these extraneous holdings and rules in such consideration, and revert to a consideration of what was the authoritative nature, breadth and meaning of such "historic" boundaries during the relevant periods contemplated by SLA, we think the Court will find that the contemporaneous political and judicial constructions of such prestatehood "historic" boundaries during relevant periods were that they were perimeter in point of fact, being a belt of at least three leagues in the Gulf of Mexico and extending without break along the margins of each of the Gulf states.

Florida's statehood Constitution and admission act defined its boundaries by reference to the title of a predecessor sovereign. The original statehood documents of Louisiana, Mississippi and Alabama described their boundaries as they were understod to be possessed by predecessor sovereigns.

These boundaries, as provided in the statehood documents of the four states, were entirely different in terms from the U. S. territorial sea. Moreover, the context of the SLA does not admit into its purview the national three mile belt. *Expressio unius est exclusio alterius.* This context is limited to a criterion which confines inquiry to whether a state's original constitution and admission or enabling acts provided a seaward boundary extending beyond three miles in the Gulf. That is the boundary which the Congress and the state agreed upon and not a boundary for international purposes which we have seen may be unilaterally rolled backward or forward by the State Department for foreign relations purposes, irrespec-

tive of previously vested original boundaries of the state. There is no basis for an "after" admission national boundary telescoping or coalescing forward or backward an original statehood boundary in the context of the SLA or elsewhere.

Florida, Alabama, Mississippi and Louisiana satisfy the SLA's criterion and, as we have seen, their "historic" boundaries were three leagues or more perimeter boundaries. They were generally considered to be such at the time of statehood and long afterwards. In fact, in *United States v. Oregon*, 295 U. S. 1, 14, it was held long after these four states were admitted into the Union that title under navigable waters within the bounds of states passed to them.

It was not until the Tidelands cases were decided in 1947 that it was determined these "historic" boundaries, in the light of more recent determinations of the political branches of the Government, did not impute to the states property rights in the sea bed embraced in said boundaries. Even in those cases, the holding was limited to an adjudication that the United States only had paramount rights, superior to the states, from low water mark in submerged areas and irrespective of their boundaries.

However, Congress, in SLA having unlimited power of property disposition, adopted the criterion specified in said context which completely excluded interposition of a national boundary into the measure of the grants. Congress, with unlimited power in the field, may be likened to a *deus ex machina* which has by its own choice laid hold of the Gulf states' "historic" boundaries as they existed without diminuition of range in the time dimension of

their original documentation and designated them, and only them, in SLA as the measure of present day grants of natural resources to the Gulf states. As originally conceived and construed as of statehood, these boundaries were perimeter in nature, extending seaward at least three leagues in the Gulf.

3. FLORIDA'S CLAIM AS APPROVED BY CONGRESS PRIOR TO THE SUBMERGED LANDS ACT.

The term "boundaries" as used in the SLA of May 22, 1953 (67 Stat. 19-33) is by the said act itself declared to also embrace the seaward boundaries of a state "as heretofore approved by the Congress." Florida's state constitution of 1868, including Article "I" thereof, which defined its boundaries, received Congressional approval within the purview of the said SLA, as we shall hereinafter demonstrate and prove.

Florida claims such lands, not only under her boundaries "as they existed at the time such State became a member of the Union" in 1845 (see pages 7 to 15 hereof), but also as they were approved by the Congress in 1868, through the approval of Florida's 1868 Constitution under and pursuant to the Acts of March 2, 1867, March 22, 1867 and June 25, 1868 (14 Stat. 428; 15 Stat. 1 and 73). Florida's argument in this connection appears on pages 14-64 of her Brief in Opposition to the Motion for Judgment on the Amended Complaint and pages 27-36 of her Reply Brief to the Government's Reply Brief.

Construction of state boundaries "as heretofore approved by the Congress." — Congress, in the SLA, defined

certain words and phrases used therein to be followed when construing the said act. These definitions are binding upon us when construing the said act (see pages 15, 16 and 17, Florida's Reply Brief to the Government's Reply Brief). One of the definitions of the term "boundaries," as used in the said act is, such boundaries "as heretofore approved by the Congress," limited to not more than three marine leagues in the Gulf of Mexico. The purpose of the SLA being merely the transfer of property and property rights from the United States to the states, and federal rights and powers necessary for control of navigation, flood control and production of power being expressly excluded from such conveyance and transfer (subsection (d) of Section 3, and Section 6, SLA). The act is internal in purpose and scope and interferes in no way with the international use of the waters of either the Atlantic or Pacific Oceans or of the Gulf of Mexico. The administration and use of the submerged lands in the Gulf of Mexico by the states will not interfere with international use of the waters any more than would a like administration and use of such submerged lands by the United States. Congress, when it measured the extent of the submerged lands and waters covering the same and the natural resources therein, for the purposes of conveyance and transfer to the states, referred to state boundaries, not for international, but for internal purposes. The transfer of the property and property rights from the United States to the states, by the SLA was a domestic, not an international problem.

As shown above, prior to Florida's Constitution of 1865 her boundaries were defined by reference to East and West Florida (Act of March 30, 1822, 3 Stat. 654; Act of March 3, 1845, 5 Stat. 742; Florida Constitutions of 1838 and

1861). However, in drafting and adopting the Florida Constitution of 1865 a departure from previous practice was made and a boundary description was contained in said Constitution (Article XII), running in part down the middle of the St. Mary's River to the Atlantic Ocean, "thence southwardly to the Gulf of Florida and Gulf of Mexico, thence northwardly and westwardly including all islands within five leagues of the shore, to the beginning." There was a further deviation made in the boundary description in Florida's Constitution of 1868, which, in part, runs along the Atlantic coast, the Gulf Stream and the Florida Reefs "to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from land, to a point west of the mouth of the Perdido; thence to the place of beginning." The Florida Constitution of 1868, containing the above mentioned description, was laid before the Congress in 1868, in connection with her readmission to representation in the Congress following the Civil War (pages 1-11, and 16-26, Appendix to Florida's Main Brief). The primary question before this Court in this connection is whether or not this constitutional description received congressional approval within the purview of the SLA.

Disputed boundary between Florida and Georgia.—The agreed boundary between Florida and Georgia, beginning prior to the American Revolution, in part ran down the Chattahoochee River to its confluence with the Flint River "from thence straight *to the head of the St. Mary's River;* thence down the middle of said river to the Atlantic Ocean ..." However, a dispute arose as to which of two streams was in truth and fact *the head of the St. Mary's River.* This boundary description dispute existed, between Spain

and Great Britain, prior to the American Revolution; after the cession of the Americas by Great Britain to the United States, between the United States and Spain; after the cession of the Floridas by Spain to the United States, between the United States and the State of Georgia; and after the admission of Florida as a state, between Florida and Georgia. The history of this disputed boundary appears from this Court's opinions in *Coffee v. Groover*, 123 U. S. 1, and *Florida v. Georgia*, 17 How. 478. This dispute between Florida and Georgia was interrupted by the Civil War. The disputed area contained upwards of 1,200,000 acres of land (*Florida v. Georgia*, supra, text 491). The dispute was finally settled by agreement and mutual legislation by both states in 1859, 1860, 1861 and 1866 (*Coffee v. Groover*, 123 U. S. 1, text 18-22). This Court in *Coffee v. Groover*, text 21, said that this boundary settlement was "recognized and confirmed by an act of Congress approved April 9, 1872." The magnitude of this boundary dispute was such that Congress was doubtless aware of it and desired to do nothing, in connection with the approval of state constitutions under the acts of March 2 and 22, 1867 (the Reconstruction acts), calculated to renew or extend the dispute. Further, it was a time of turmoil, and a majority of the members of Congress were unfriendly to the rebel states, which were not then represented in the Congress. In view of this, it is inconceivable that Congress did not carefully examine the boundaries appearing in the proposed constitutions when readmitting Florida, as well as Georgia and other rebel states to representation.

Florida Constitution of 1868 before Congress. — The Acts of March 2 and 22, 1867, required, as a condition to representation in Congress, that the rebel states, among other things, prepare, adopt and approve new state con-

stitutions, and submit the same to "Congress for examination and approval, and (when) Congress shall have approved the same" their representatives would be seated. Florida adopted, approved and had submitted to the Congress her Constitution of 1868, which was referred to the Committee on Reconstruction and ordered to be printed (Appendix, Florida's Main Brief, pages 16-27). The Congressional order for printing of the said Constitution was doubtless for the purpose of making copies available to all members of Congress for study and consideration. The Congressional Globe for 1868 shows clearly that the Florida 1868 Constitution received Congressional study and consideration. The Attorney General of the United States in 1869, as well as many military commanders in 1868 and 1869, held that Florida's 1868 Constitution had received Congressional approval (see Florida's Main Brief, pages 46-57, and Reply Brief to the Government's Reply Brief, pages 29-32). The Florida District Court (three judge court) and the Circuit Court of Appeals, Fifth Circuit, (Florida's Main Brief, pages 53-55), were of the opinion that Florida's boundaries, as contained in her 1868 Constitution, had received Congressional approval. These authorities show an approval of Florida's 1868 Constitution by the Congress. (See also, *Skiriotes v. State*, 144 Fla. 220, 197 So. 736.) Where the Constitution or statutes require legislative or congressional approval such approval may be an implied one, unless otherwise specifically required by such documents (see pages 34-36, Florida's Main Brief). There is no specific requirement in the SLA, or otherwise, that the approval of state boundaries by Congress should have been an express one. The record shows an approval by Congress of Florida's 1868 Constitution, including the state boundary description therein, within the purview and intent of the SLA.

The Government, on pages 272 and 273 of its Main Brief, accredits to Congressman Thaddeus Stevens certain statements and comments made in Congress alleged to show that Congress when examining reconstruction constitutions examined them only for the purpose of determining whether they were Republican in form or not; however, only a few short paragraphs away from the statement referred to by the Government, we find (Congressional Globe, May 13, 1868, page 2445) Stevens, addressing himself to an amendment proposed by him to the Georgia Constitution, being then examined by the Congress, saying:

> "I propose that amendment for this reason: The constitution of Georgia nullifies all debts due before a certain period, as well as those due to loyal men as to rebels. My amendment is that it shall nullify only those due to rebels and not those due to loyal men."

If the provision, prior to the proposed amendment, was not Republican in form as applied to all men, it certainly was not improved in this respect by limiting it to only those who were loyal to the United States during the war.

What the Congress was trying to do, in connection with its examination of the state constitutions, was expressed by Congressman Beck (Congressional Globe, May 13, 1868, page 2446), when he said:

> ". . . The gentleman from Pennsylvania (Mr. STEVENS) in the motion he made a few moments ago, to amend the constitution of the State of Georgia, has avowed boldly the true position of the majority in regard to the constitutions of the southern States. I say in all candor that his proposition to amend the constitution of the State of Georgia, because it does not suit this House, is presenting the issue fairly and

clearly. This House made that constitution; it ordered how it should be made, selected or rather appointed the man to frame it, and all others excluded from or admitted to the polls whom they pleased, and under the pretense of an election not only told the people of those States that no one but adherents of the dominant party should have any part or lot in the administration of the governments under them no matter how odious they might be to the people there.

"These constitutions do not represent the action of the people of any of those States, but they represent, in fact, the will and the orders of Congress. This House has just as much power—I do not say right, but power to alter, amend and make those State constitutions what they please, to say what they shall and what they shall not contain, who are elected and who are not elected, who shall and who shall not be admitted to seats on this floor and on the floor of the Senate, and who shall and who shall not occupy the State offices, as they have to do what they have done, and it would be more manly to avow it boldly at once.

"The papers now presented here as State constitutions are in fact but the action of Congress, and the amendment offered by the gentleman from Pennsylvania, (Mr. STEVENS,) or any other amendment, is just as legitimate, valid, and binding on the people of the South as the papers now presented are, and it would be no more the action of this House if adopted than are those papers now before us as constitutions of these Southern States are. By the adoption of such amendments now, the people of the country would understand clearly what is the undoubted fact, that Congress has framed constitutions and appointed officers to govern these states, and men to represent them here without their consent and against their will.

The sooner they understand and appreciate these facts the better, as the remedy will be the sooner applied."

An examination of the Congressional Globe of 1867 and 1868, relative to state constitutions' requirements for further representation in Congress, leaves little doubt but that Congress' examination of such constitutions was general, often going beyond questions of Republican form of government. Further, there is no record of protest by Congress or the Executive branch as to Florida's 1868 three league boundaries.

No objection to Florida's boundary by the Secretary of State.—The President of the United States transmitted a copy of the Florida Constitution of 1868 to Congress on May 27, 1868, which Constitution was ordered printed on May 29, 1868 (House Miscellaneous Document No. 297, 2nd Session, 40th Congress), which Constitution was laid before Congress, and by it referred to the Committee on Reconstruction where such Constitution was extensively considered by the Congress (pages 50-79, Appendix to Florida's Main Brief) between June 2, 1868 and July 2, 1868, when the delegation to Congress from Florida was permitted to take their seats in Congress). Arguments in this connection were long and heated. It appears from an examination of incoming and outgoing correspondence of the United States Department of State for this period the Secretary of State was present in the Department signing letters during most of this time, and that when not present like correspondence was signed by the Assistant Secretary of State or by the Chief Clerk. During this time the Secretary of State received correspondence from the Senate Committee on Foreign Relations, and from various mem-

bers of Congress; however, there is to be found no correspondence of protest or otherwise relative to the Florida Constitution of 1868. All as appears from that certain affidavit of J. Chrys Dougherty, in words and figures as follows:

"THE STATE OF TEXAS ()

COUNTY OF TRAVIS ()

"Before me, the undersigned authority, on this day personally appeared J. Chrys Dougherty, who being known to me and being by me duly sworn on his oath deposes and says:

"My name is J. Chrys Dougherty. I reside at No. 6 Green Lanes, Austin 3, Texas. I am one of the counsel in No. 10, Original, October Term 1959, styled United States of America v. The States of Louisiana, Texas, Mississippi, Alabama, and Florida, now pending in the Supreme Court of the United States.

"On October 16, 1959, in the National Archives, I examined all of the incoming and outgoing domestic correspondence of the United States Department of State for the period beginning April 1, 1868, and ending July 15, 1868, as reflected in Volumes 78 and 79, Domestic Letters (outgoing) and Volumes 1868 (Parts I and II, Miscellaneous Letters (incoming).

"I found that William H. Seward was apparently present daily in the Department signing outgoing letters from Monday, May 25 through Tuesday, June 9, 1868 (see 78 Domestic Letters 497-555), and again from Monday, June

22 through Wednesday, July 1, 1868 (see 79 Domestic Letters 1-43). In the interim, letters seem to have been signed by the Assistant Secretary of State or by the Chief Clerk.

"I found no letter or other document in either incoming or outgoing correspondence relating to the Florida Constitution submitted to the Congress by President Johnson in his Message of May 27, 1868 (House Misc. Doc. 397, 40th Cong., 2d Sess.) or to the three-league Gulfward boundary provision in Article I of that Constitution.

"I did find that the Secretary of State received correspondence from the Senate Committee on Foreign Relations, on June 11, 1868, and from various members of the Senate and House of Representatives during the month of June. (See Letter from William Higby, June 18; Letter from W. R. Robertson, June 20; Letter from S. M. Collum, June 22, and Letter from H. P. Banks, June 26, transmitting a resolution of the House Committee on Foreign Affairs; all in Miscellaneous Letters 1868, Part I.)

"I found that Mr. Seward wrote the following letter (79 Domestic Letters 8):

" 'Hon. H. McCulloch
Secretary of the Treasury

" 'Sir:

Informal representations have been addressed to this Department by the representatives of foreign governments here in regard to the discrimination proposed in the Revenue Bill before Congress in the tax on Insurance Agents. It is suggested that as the amount of revenue derived from this source must be small, the

attention of the proper committee be called to the subject.

I have the honor to be, Sir,
Your obedient servant
William H. Seward'

"Further affiant saith not.

/s/ *J. Chrys Dougherty*
J. Chrys Dougherty

"Sworn to and subscribed before me by the said J. Chrys Dougherty on this the *23rd* day of October, 1959, to certify which witness my hand and seal of office.

(SEAL) /s/ *Annette H. Westbrook*
Notary Public in and for
Travis County, Texas"

The original of which has been filed with the Clerk of this Court.

Change of state boundaries.—It is evident from *New Mexico v. Colorado*, 267 U. S. 30; *Oklahoma v. Texas*, 265 U. S. 493; *Arkansas v. Tennessee*, 246 U. S. 158; and *Louisiana v. Mississippi*, 202 U. S. 1, that a state's boundary may not be changed without its consent. Boundaries between two states may be changed by compact between such states only when approved by the Congress (*Florida v. Georgia*, 17 How. 478, text 494 and 495). This approval may be an implied one (see Florida's Main Brief, pages 34-36). Although it may be that neither the state, Congress, nor federal agency, acting alone, may change the boundaries of that state, such state, with the consent and approval of the federal government, may make such a change. It was competent for Florida, with the consent and approval of the Congress, to redefine and relocate her

seaward boundaries in the Gulf of Mexico, as was done by the adoption of Florida's 1868 Constitution and its approval by Congress, although such approval may have been an implied one.

The three league boundary in the Gulf of Mexico.— The three league boundary of Florida in the Gulf of Mexico, as fixed in her Constitution of 1868 with the approval of Congress, is the boundary adopted by the SLA, as one approved by Congress prior to the adoption of said act, whether or not the same was strictly an international boundary or not. It might be said to be a boundary like or similar to the three league boundary fixed by the Treaty of Guadalupe Hidalgo of February 2, 1848, by and between the United States and Mexico, which boundary was protested by England, to which protest the Secretary of State of the United States replied that the stipulated boundary affected only the rights of Mexico and the United States, and that "third parties can have no just cause of complaint." This reply further advised that "the government of the United States never intended by this stipulation to question the rights of Great Britain, or any other power, might possess under the law of the nations." Under subsection (d) of Section 3, and Section 6, of the SLA, there was reserved to the United States, and did not pass to the states thereunder, the ". . . navigational servitude and rights in and powers of regulation and control of said lands and navigable waters (conveyed and transferred to the states) for the constitutional purposes of commerce, navigation, national defense, and international affairs . . . " This provision seems to have been designed to preserve the use of the waters for international purposes and permit the use of such properties and property rights, by the states, subject to the superior right of international use of the waters.

Such use by the states would differ little, if any, from a like use by the United States for a like purpose. The state is substituted for the administration and use of such property and property rights in lieu of the United States. A three league boundary for state administration and use of such property and property rights does not interfere with international use and rights in the waters in question.

SUMMARY

First.—It was the purpose and intention of the SLA of 1953 to convey and transfer to the states the submerged lands and natural resources therein with the right in the states to administer such lands and resources for their own account; subject, however, to the international use of the waters for navigation and other usual international purposes. The boundaries mentioned in connection with this conveyance and transfer are boundaries for internal, and not international purposes, and do not interfere with boundaries for international purposes. The boundaries for such transfer of property and property rights are the state historical boundaries, not international boundaries.

Second.—Florida has two historic boundaries, both of which may be said to have been approved by the Congress: (1) the boundary under which she was admitted as a state by the Congress, and (2), the boundary approved by Congress in connection with Florida's 1868 Constitution. Although there appears no specific boundary description of the Floridas prior to the Proclamation of King George III of England on October 7, 1763, such proclamation adopted a boundary description that included "all islands within six leagues of the coast." The Treaty of Amity, Settlement and Limits, between Spain and the United

States, of 1819, described the Floridas as including "the adjacent islands dependent upon said provinces." The very nature of the setting of the Floridas and the numerous islands adjacent and dependent thereto, the depth of the waters of the Gulf of Mexico, the protection of legitimate navigation against piracy and illegal buccaneering, suggested a wider marginal sea in the Gulf of Mexico for the Floridas, as well as other Gulf Coast possessions and states.

Third.—Florida, in drafting her 1865 and 1868 Constitutions, was desirous of adopting more specific and certain boundaries. Under reconstruction laws the rebel states, including Florida, were required to draft, adopt and submit to Congress for its consideration and approval new state constitutions. Pursuant to these reconstruction laws, Florida drafted, adopted and submitted to Congress her 1868 Constitution containing a detailed boundary description, a portion of which, running from the St. Mary's River south "to the Gulf Stream and Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from land, to a point west of the mouth of the Perdido river . . . " This boundary received the approval of Congress, within the purview of the SLA, upon the congressional approval of the 1868 Constitution of Florida, as hereinabove shown.

Respectfully submitted,

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PROOF OF SERVICE

I, Richard W. Ervin, Attorney General of Florida, certify that on the 27th day of October, 1959 I air mailed a reproduced copy of the final typewritten draft of the foregoing brief to the Solicitor General of the United States; that on the 30th day of October, 1959 copies of this brief were mailed to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C., and on the 30th day of October, 1959 copies were mailed to the Attorneys General of the States of Texas, Louisiana, Mississippi and Alabama.

RICHARD W. ERVIN
Attorney General of Florida